

# The Gazette of India



## EXTRAORDINARY PART II—Section 2 PUBLISHED BY AUTHORITY

No. 45] NEW DELHI, SATURDAY, OCTOBER 3, 1964/ASVINA 11, 1886

Separate paging is given to this Part in order that it may be filed  
as a separate compilation

### LOK SABHA

The following Bill was introduced in Lok Sabha on the 3rd October, 1964:—

BILL NO. 71 OF 1964

*A Bill further to amend the Representation of the People Act, 1951.*

Be it enacted by Parliament in the Fifteenth Year of the Republic of India as follows:—

1. This Act may be called the Representation of the People Short  
(Second Amendment) Act, 1964. title.

43 of 1951. 5 2. In Part VIII of the Representation of the People Act, 1951, Insertion  
after section 145, the following Chapter and sections shall be inser- of new  
ted, namely:— Chapter and sec-  
tions after  
section  
145.

#### "CHAPTER IV

10 *Powers of Election Commission in connection with Inquiries as to  
Disqualifications of Members*

20 of 1963. 15 146. (1) Where in connection with the tendering of any Powers of  
opinion to the President under article 103 or, as the case may Election  
be, under sub-section (4) of section 14 of the Government of Commission.  
Union Territories Act, 1963, or to the Governor under article  
192, the Election Commission considers it necessary or proper  
to make an inquiry, and the Commission is satisfied that on the  
basis of the affidavits filed and the documents produced in such  
inquiry by the parties concerned of their own accord, it cannot

come to a decisive opinion on the matter which is being inquired into, the Commission shall have, for the purposes of such inquiry, the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document or other material object producible as evidence;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or a copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents.

(2) The Commission shall also have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the Commission may be useful for, or relevant to, the subject matter of the inquiry.

(3) The Commission shall be deemed to be a civil court and when any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code, is committed in the view or presence of the Commission, the Commission may after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898, forward the case to a magistrate having jurisdiction to try the same and the magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, 1898.

(4) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

146A. No statement made by a person in the course of giving evidence before the Election Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

State-  
ments  
made by  
persons  
to the  
Election  
Commis-  
sion.

Provided that the statement—

(a) is made in reply to a question which he is required by the Commission to answer, or

(b) is relevant to the subject-matter of the inquiry.

5        146B. The Election Commission shall have the power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private).

Procedure to be followed by the Election Commission.

10        146C. No suit, prosecution or other legal proceeding shall lie against the Commission or any person acting under the direction of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of the foregoing provisions of this Chapter or of any order made thereunder or in respect of the tendering of any opinion by the Commission to the President or, as the case may be, to the Governor or in respect of the publication, by or under the authority of the Commission of any such opinion, paper or proceedings."

Protection of action taken in good faith.

### STATEMENT OF OBJECTS AND REASONS

If any question arises as to whether a member of Parliament or of a State Legislature (including the Legislature of a Union territory) has become subject to any disqualifications specified in article 102 (Parliament) or article 191 (State Legislature) or section 14(1) of the Government of Union Territories Act, 1963 (Union Territory Assembly), the question is referred to the President under article 103, or under section 14(3) of the Government of Union Territories Act, or to the Governor under article 192 for decision and the President or, as the case may be, the Governor is required to obtain the opinion of the Election Commission on the question and decide it in accordance with such opinion.

Before the Election Commission can give a considered opinion on such a reference, the Commission may naturally require further relevant materials besides the bare averments made by the person who has raised the question and other interested parties. But neither the Constitution nor the Government of Union Territories Act, 1963, nor the Representation of the People Act, 1951, prescribes the procedure to be followed by the Commission in this regard. While the Commission has been charged with the responsibility of tendering a binding opinion on the question of disqualification of a member, it has not been vested with the necessary legal powers which would enable it to hold an adequate inquiry into the issues involved. The allegations made in such cases are of serious consequence to the parties concerned and often involve questions of great public importance. In the absence of the necessary legal powers in this behalf the Election Commission is very often handicapped in the matter of finding out the true state of affairs in relation to an alleged disqualification. The Commission has experienced this difficulty in several cases including a recent one in which the Commission has expressly recommended that it should be vested with the powers of a civil court as under the Commissions of Inquiry Act, 1952, such as the power to summon witnesses and examine them on oath, the power to compel the production of documents, the power to issue commissions for the examination of witnesses, etc. A similar recommendation was made by the Commission in Chapter XXIV of its Report on the Second General Elections in India, 1957, Vol. I.

The recommendation of the Election Commission appears quite reasonable. It is accordingly proposed that when in any inquiry in connection with the disqualification of a member of Parliament or of a State Legislature the Election Commission is satisfied that it cannot come to a decisive opinion on the basis of the affidavits filed and documents produced in the inquiry by the parties concerned of their own accord, then, the Commission shall have the powers of a civil court as mentioned in the Commissions of Inquiry Act, 1952.

The Bill is intended to give effect to this proposal by inserting a new Chapter IV in Part VIII of the Representation of the People Act, 1951.

NEW DELHI;

A. K. SEN.

*The 28th September, 1964.*

---

S. L. SHAKDHER,

*Secretary.*

